



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

September 5, 2003

VIA FEDERAL EXPRESS

Stan Melmstrom, President
SKF USA, Inc.
1111 Adams Ave.
Norristown, PA 19403

Re: **IMPORTANT LEGAL MATTER - Prompt Attention Needed**
General Notice Letter to Potentially Responsible *De Minimis* Parties
Operating Industries, Inc. Superfund Site
900 Potrero Grande Drive, Monterey Park, California

Dear Stan Melmstrom:

The United States Environmental Protection Agency ("U.S. EPA" or "Agency") sends this letter to notify you that based on waste manifests in its files and other information the Agency has identified SKF USA, Inc. or a predecessor entity or entities (hereinafter collectively referred to as "your company or organization") as the generator of liquid industrial wastes disposed at the Operating Industries, Inc. Superfund Site in Monterey Park, California ("OII" or "Site"). Accordingly, this letter also notifies you that your company or organization potentially is liable under the federal law informally known as Superfund for costs related to the on-going clean up of OII to protect human health and the environment. This letter also provides a brief overview of Superfund; briefly describes some important concepts and processes under Superfund; provides preliminary information about an upcoming opportunity to settle your company's or organization's potential liability for the wastes it disposed at OII and background information about the clean-up process at the Site; and identifies other sources of information.

Superfund Overview

The formal name of the Superfund law is the Comprehensive Environmental Response, Compensation, and Liability Act, or "CERCLA." CERCLA's objective is to reduce and eliminate threats to human health and welfare and the environment from releases of hazardous substances, including pollutants and contaminants. To meet this objective, CERCLA provides the federal government a broad range of legal authority to address such releases and designates the U.S. EPA to administer the clean-up program. Under CERCLA, for example, the U.S. EPA itself has authority and funds to implement clean-up actions necessary to protect human health and the environment at

sites such as OII. CERCLA also creates a comprehensive liability scheme pursuant to which the Agency may require certain identified categories of parties to clean up a site. CERCLA further authorizes the Agency to enter into settlements which require the identified categories of parties to pay costs associated with a clean up instead of themselves doing the clean-up work. In addition, CERCLA requires the creation and annual revision of a National Priorities List ("NPL") to identify and prioritize for clean up hazardous waste sites around the country.

Potentially Responsible Parties

An entity who may be responsible for hazardous substances at a Superfund site often is referred to as a "potentially responsible party" or "PRP." An entity may be a PRP even if it acted in full accordance with the law at the time it disposed of wastes because CERCLA embodies the policy that those responsible for the disposal of wastes containing hazardous substances should bear the cost of cleaning up sites at which such wastes pose a threat to human health or the environment. Potentially responsible parties can include individuals, businesses, governmental agencies, and other types of organizations. CERCLA identifies the following four categories of potentially responsible parties:

- 1) the current owner(s) or operator(s) of the site;
- 2) the former owner(s) or operator(s) of the site during the period that hazardous substances were disposed at the site;
- 3) parties that arranged for the treatment, disposal, or transportation of hazardous substances to the site (referred to as "generators"); and
- 4) parties that selected the site as a place to dispose of hazardous substances and who transported these substances to the site (referred to as "transporters").

The U.S. EPA has determined that your company or organization is a potentially responsible party at the OII Superfund Site. As noted above, the Agency made this determination based on the existence of one or more liquid industrial waste manifests in its files and other information that identifies your company or organization as the generator of hazardous wastes disposed at the Site.

***De Minimis* Settlements**

Under CERCLA, the U.S. EPA may offer special settlements to *de minimis* parties. In order to qualify as a *de minimis* party, hence to be eligible for a *de minimis* settlement, both the quantity and the toxicity or other hazardous characteristic(s) of the wastes that a party contributes to a site must be minimal in comparison to the total waste sent to the site by other parties. Moreover, as part of a *de minimis* settlement, a party must certify that the wastes it contributed to a site do not exceed the *de minimis* volumetric threshold established by the U.S. EPA, and that the wastes are only minimally toxic or otherwise hazardous. At OII, the U.S. EPA originally designated as *de minimis*

waste generators parties who contributed less than 110,000 gallons of wastes to the Site. To facilitate the successful negotiation of the Eighth Partial Consent Decree ("CD-8") in 2001, the Agency increased the *de minimis* threshold so that now all parties who contributed less than five million gallons of wastes to the Site are designated as *de minimis* waste generators. Based on the information in its files, the U.S. EPA believes that your company or organization meets these criteria.

De minimis settlements provide significant benefits to the participating parties, including benefits generally not available to parties who contribute the largest proportion of wastes to a site. Three of the most important benefits are that *de minimis* settlers receive both a "covenant not to sue" and "contribution protection," and the choice of a settlement option that essentially prevents the U.S. EPA from "reopening" the settlement to seek additional settlement payments from a party. Brief descriptions of these three benefits follow:

- A **"covenant not to sue"** is a promise by the U.S. EPA contained in a settlement agreement that the Agency will not bring any future legal action against a settling party in relation to the matters addressed by the settlement. The scope of the promise is linked to the nature of the reopeners included in it (see below).
- **"Contribution protection"** confers on settling PRPs statutory-based protection from suit by other PRPs who have paid for or performed clean-up work at a site. Major waste generators frequently sue small waste generators to recover their clean-up costs. Contribution protection, like a covenant not to sue, extends to all matters addressed by the settlement.
- **"Reopeners"** essentially are exceptions to a covenant not to sue; i.e., the U.S. EPA promises not to bring further legal action except under the circumstances specified in the reopener (formally, the reservation-of-rights) provision. In *de minimis* settlements, parties typically have a choice between two covenants not to sue. One covenant is subject to a reservation of rights by the U.S. EPA that allows the Agency to "reopen" the settlement and seek additional funds from the settling parties if: 1) conditions at the site previously unknown to the U.S. EPA are discovered, or information previously unknown to the U.S. EPA is received in whole or part; and 2) this information indicates that the clean up is not sufficient to protect human health or the environment. The other covenant is not subject to a reservation of rights based on "unknown conditions" or "unknown information."

The amount of money a *de minimis* PRP must pay to settle its potential liability is site specific. In general, however, the settlement payment required includes two components: a basic payment and a premium payment. The basic payment is calculated using the estimated cost to clean up the site and the volume of the *de minimis* party's wastes (as a percentage of the total amount of

waste attributed to all PRPs at the site). The premium payment varies according to a variety of factors specific both to the site and the settlement, but in all cases functions like an insurance premium. The premium represents the cost of transferring from the settling party to the U.S. EPA and non-settling parties the risk that the clean up will cost more than estimated.

Taken together, contribution protection, the covenant not to sue, the option to choose a covenant with no reopeners, and other *de minimis* settlement terms, can provide a settling PRP with a high degree of certainty that its potential liability at a site is satisfied, and that it is protected from future legal action related to the matters addressed in the settlement. To date, approximately 459 *de minimis* parties have entered into a final settlement with the U.S. EPA at OII. The enclosed brochure entitled "Superfund and Small Waste Contributors" provides more information about *de minimis* settlements and settlement payments.

Small Business Regulatory Enforcement Fairness Act

Enclosed for your information is a fact sheet concerning the right of small businesses under the Small Business Regulatory Enforcement Fairness Act ("SBREFA") to comment to an Ombudsman about EPA enforcement activity. The fact sheet also provides information on compliance assistance available to small businesses. The inclusion of the fact sheet does not constitute a determination by the U.S. EPA that your company or organization is a small business as defined by Section 222 of SBREFA or related provisions.

Designating a Primary Contact to Receive Future Correspondence

Due to the large number of parties receiving this letter, the U.S. EPA can only send future correspondence and materials concerning OII and the *de minimis* settlement process to one contact per company or organization. Therefore, please use the enclosed Primary Contact Designation Form to designate the most appropriate individual to receive all further correspondence on this matter on behalf of your company or organization (the "Primary Contact").

Please use the enclosed postage-paid envelope to return the completed Primary Contact Designation Form to the U.S. EPA within ten (10) days of your company's or organization's receipt of this letter. The Agency will continue to send future correspondence to you until your company or organization returns a completed Primary Contact Designation Form designating someone else.

The U.S. EPA Will Send a Settlement Offer to You or The Primary Contact

The U.S. EPA is preparing a package of additional information to send you or the Primary Contact approximately ten (10) weeks after your company or organization receives this letter. The package of additional information will include an offer to settle your company's or organization's potential liability under CERCLA for disposing of wastes at OII and an explanation of your company's or organization's cost to join the settlement. The package also will include the U.S.

EPA's assessment of the volume of waste attributable to your company or organization, including copies of the manifests documenting the wastes disposed by your company or organization. A copy of the proposed settlement agreement in the form of an Administrative Order on Consent, pursuant to CERCLA, Section 122(g)(4), 42 U.S.C. § 9622(g)(4), will be included in the package as well.

The terms of the settlement and the steps in the settlement process will be more fully explained in the package sent to you or the Primary Contact. In brief, however, your company or organization will have forty-five (45) days from its receipt of the package to review the offer and return a signature page demonstrating its willingness to settle its CERCLA liabilities for OII. If your company or organization wants to join the settlement, but believes that paying the total settlement amount would place it in severe financial jeopardy, or that the total volume of waste attributed to it is incorrect, your company or organization may agree to settle in principle and request the Agency to evaluate its ability to pay the settlement amount and/or to review the volume assessment. Your company or organization then would have an opportunity to withdraw its signature page after receiving notification of the results of the U.S. EPA's review.

The Administrative Order on Consent becomes final after a public notice and comment period and approval by the U.S. Attorney General. Once the Administrative Order on Consent is final, and the U.S. EPA has received your company's or organization's settlement payment, your company or organization will receive the important benefits described above in the section of this letter on *de minimis* settlements.

The Operating Industries, Inc. Superfund Site

OII is a 190-acre former landfill located along the Pomona Freeway in Monterey Park, California, approximately ten miles east of Los Angeles. The Site, which operated as a landfill from 1948 to 1984, is divided into a 45-acre northern parcel ("North Parcel") and a 145-acre southern parcel ("South Parcel") by the Pomona Freeway. Some 35,000 people live within one mile of the Site, many commuters travel past the Site each day, and numerous residences and small businesses are immediately adjacent to the Site's boundaries. During its operation as a landfill, OII accepted a wide variety of industrial and commercial hazardous wastes including, as documented by approximately 100,000 waste manifests in EPA's possession, over 300 million gallons of liquid industrial wastes collectively disposed of by over 4,000 waste generators. These industrial and commercial wastes contained organic and inorganic hazardous substances. OII also accepted large amounts of municipal waste.

The owners and operators of OII ceased their efforts to maintain the landfill in May 1986, by which time the Site already posed a threat to the surrounding community and the environment. Hazardous liquids were migrating from the Site onto nearby sidewalks, streets, and parks, threatening the health and safety of residents. Hazardous gases from the Site, including vinyl chloride (a known human carcinogen), were detected at potentially threatening levels inside some

nearby residences and in the ambient air near the Site. The landfill itself was unstable, and was in danger of partially collapsing into adjacent homes. The majority of these problems were related to the South Parcel.

In 1986, OII was placed on the NPL and the U.S. EPA assumed responsibility for site control and monitoring activities to prevent further threats to human health and the environment. The U.S. EPA also conducted emergency response actions to mitigate immediate threats. These actions included collecting and treating landfill liquids and landfill gases, and stabilizing the landfill's slopes. In addition, the U.S. EPA initiated the process known as the Remedial Investigation/Feasibility Study ("RI/FS") to characterize the nature and extent of risks posed by the landfill. The OII RI/FS process culminated in the September 1996 Final Record of Decision (the "Final ROD") which explains the U.S. EPA's selection of a final remedy for OII. During the RI/FS process, the U.S. EPA designated three operable units ("OUs") at OII: Site Control and Monitoring ("SCM"), Leachate Management ("LM"), and Gas Migration Control and Landfill Cover ("Gas Control & Cover"). The U.S. EPA issued interim RODs for the SCM and LM OUs which respectively required, pending implementation of the final remedy, actions to secure OII and stabilize conditions there, and the management of contaminated leachate, including the design, construction and the initial operation of a leachate collection and on-site treatment system. The U.S. EPA issued a third ROD (the "Gas Control & Cover ROD") to require the design, construction, and operation of a gas collection and treatment system, the final landfill cover, and surface water control systems. The Final ROD requires a groundwater remedy consisting of perimeter liquids control to prevent further releases and monitored natural attenuation of groundwater contamination beyond the landfill boundary. The Final ROD also requires the long-term operation and maintenance of all site systems not addressed by the Gas Control & Cover ROD, thereby superseding the SCM and LM RODs. Implementation of the final remedy for OII, which consists of the Gas Control & Cover ROD and the Final ROD, already has begun. Operation and maintenance of the Site remedial systems likely will be required for more than 100 years.

The U.S. EPA did not act alone in these efforts; the State of California and many of the largest waste generators at the Site helped accomplish important interim protective measures. Moreover, all response actions selected in the RODs and implemented to date have been or are being performed by the "major waste generators"¹ at the Site under a series of settlements and enforcement actions. As a result of EPA's enforcement efforts to date, the Agency has concluded eight judicially approved settlements in the form of partial consent decrees; issued two unilateral orders; and concluded five administrative settlements in the form of administrative orders on consent collectively valued at more than \$600 million.

¹ EPA originally designated as "major waste generators" a group of approximately 350 parties collectively responsible for generating over 85% of the manifested wastes at OII, each of whom individually contributed at least 110,000 gallons of wastes. As noted earlier, EPA increased the *de minimis* threshold to five million gallons in 2001.

As discussed above, the U.S. EPA will send a settlement offer to your company or organization in the near future. Your company or organization then will have an opportunity to contribute its fair share of funds toward past costs and the future work required to remediate the Site.

Further Information about OII and the *De Minimis* Settlement

The U.S. EPA encourages your company or organization to become more familiar with OII and the *de minimis* settlement process. Towards this end, several fact sheets are enclosed with this letter to provide your company or organization with more information. In addition, the U.S. EPA has established a special telephone number and an e-mail address that your company or organization may contact with questions about the OII *de minimis* settlement process. The U.S. EPA also has established web pages on the U.S. EPA Region IX internet site to provide further information about OII and the *de minimis* settlement. The telephone number and e-mail address for inquiries, the internet addresses for the OII and *de minimis* web sites, the telephone numbers and addresses for several information repositories, and contact information for a representative of the major waste generators at OII, are provided below.

Telephone and E-Mail Addresses

The toll-free telephone number your company or organization may contact with questions about the OII *de minimis* settlement process is:

(800) 394-0495

Questions also may be sent to the following e-mail address (please include a brief description of the inquiry in the e-mail's "subject" field so that the message may be directed to the most appropriate person for a response):

OII_De_Minimis@epamail.epa.gov

Due to the large number of parties receiving this letter, the U.S. EPA may not be able immediately to respond to each telephone and e-mail inquiry, but the Agency promises to make every effort to respond as quickly as possible.

Web Page Internet Addresses

The OII *de minimis*-specific web site may be found at:

[<http://www.epa.gov/region09/waste/sfund/oii/deminimis/>]

The general OII web site may be found at:

[<http://www.epa.gov/region09/waste/sfund/oii/>]

Site Document Repositories

Copies of Site-related documents also are available at the following document repositories in the vicinity of OII:

Bruggemeyer Memorial Library 318 South Ramona Ave. Monterey Park, CA 91754 (626) 307-1333	Los Angeles County Public Library Montebello Regional Branch 1550 W. Beverly Blvd. Montebello, CA 90640 (323) 722-6551
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Of these two repositories, the Bruggemeyer Memorial Library maintains the more complete set of records about OII (most of which are on microfilm).

In addition, the U.S. EPA's Superfund Records Center in San Francisco maintains a collection of documents related to OII:

Superfund Records Center 95 Hawthorne Street, 4th Floor San Francisco, CA 94105 (415) 536-2000

(The offer package the U.S. EPA will send you or the Primary Contact will include a form to request from the Superfund Records Center additional documents that may be of interest to you or your organization.)

Offer Package

The offer package the U.S. EPA will send you or the Primary Contact will contain additional information which should answer most, if not all, of the remaining questions your company or organization may have after utilizing the other information resources mentioned above. In particular, the package will provide all of the information your company or organization will need in order to participate in the upcoming OII *de minimis* settlement.

OII Steering Committee

Your company or organization also may wish to contact the OII Steering Committee, the representative of the "major waste generators," for their views on OII. For your information, the OII Steering Committee has informed the U.S. EPA that it intends to send a tolling agreement to your company or organization shortly after you receive this letter. Please direct any questions you may have for the OII Steering Committee to Ms. Cheryl Nunn, Administrator, at (323) 727-6896.

Opportunity for an Informational Meeting regarding OII and the *De Minimis* Settlement

The U.S. EPA will schedule an informational meeting in the Los Angeles area that your company or organization may wish to attend to learn more about OII and the forthcoming *de minimis* settlement offer. This meeting will be scheduled for approximately twelve (12) weeks after your company or organization receives this letter. The meeting is intended solely to help answer questions that *de minimis* parties may have about OII and the *de minimis* settlement process, and the Agency encourages those companies or organizations to attend who want to ask such questions in person. However, attendance at the informational meeting is entirely voluntary. The specific time and place of the informational meeting, as well as other information about the meeting, will be provided in the offer package the U.S. EPA will send you or the Primary Contact. In addition, the Agency will post updated information about the meeting on the OII *de minimis* web site referenced above.

Summary of Next Steps

The following list summarizes the next major steps in the OII *de minimis* settlement process:

1. Your company or organization returns the enclosed Primary Contact Designation Form within ten (10) days of receipt of this letter;
2. Approximately ten (10) weeks after your company or organization receives this letter, the U.S. EPA sends you or the Primary Contact an offer package containing an offer to settle your company's or organization's potential liability, an explanation of your company's or organization's cost to join the settlement, and other materials as described above;
3. Approximately twelve (12) weeks after your company or organization receives this letter, the U.S. EPA convenes an informational meeting.

Conclusion

Participation in the *de minimis* settlement process may well be in your company's or organization's best interest. The U.S. EPA looks forward to receiving a completed Primary Contact Designation Form from your company or organization, and to communicating with your company

or organization about the OII *de minimis* settlement process through you or the Primary Contact. Good communication will help make this process successful for your company or organization as well as for the Agency.

Thank you in advance for your cooperation.

Very truly yours,

A handwritten signature in black ink, appearing to read "Elizabeth J. Adams". The signature is fluid and cursive, with the first name "Elizabeth" written in a larger, more prominent script than the last name "Adams".

Elizabeth J. Adams, Acting Chief
Superfund Site Clean Up Branch

Enclosures:

- Primary Contact Designation Form. Please complete and return this form **within 10 days** of receipt of this letter.
- U.S. EPA Fact Sheet: "Superfund and Small Waste Contributors"
- U.S. EPA Fact Sheet: "Small Business Regulatory Enforcement Fairness Act"
- U.S. EPA Fact Sheet: "Superfund at Work" (Spring 1996)
- U.S. EPA Fact Sheet: "OII Update" (October 2002)

cc: Amy Gillespie, U.S. Department of Justice